



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 17, 1996

Mr. Mart Hoffman  
Interim Executive Director  
Texas Department of Protective  
and Regulatory Services  
P.O. Box 149030  
Austin, Texas 78714-9030

OR96-0044

Dear Mr. Hoffman:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 37588.

In connection with the receipt by the Texas Department of Protective and Regulatory Services of a request for information under the Open Records Act, Government Code chapter 552 (the "act") your predecessor asked whether "electronic mail" transmitted among staff of the Texas Department of Human Services is "public information" under the act. It is our understanding that "electronic mail," as your predecessor referred to it, consists of texts of messages which are recorded and transmitted using computers.

Section 552.021(a) of the Government Code provides:

(a) Information is public information if, under a law or ordinance or in connection with the transaction of official business, it is collected, assembled, or maintained:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

If the electronic mail your predecessor asked about is "public information" under section 552.021, it is subject to the act and may be withheld from public disclosure under the act

only to the extent that the information falls within one of the exceptions to disclosure of public information set out there. *See* Gov't Code §§ 552.101 - .123.

The department here is a "governmental body" under the act. *See id.* § 552.003(a)(1). It also seems clear that the electronic mail at issue here--a communication between staff members on department equipment about a case handled by the department, of which you have provided us a copy--was "collected, assembled or maintained" by the department "in connection with the transaction of official business" within the section 552.021 definition of "public information." *See* Open Records Decision No. 626 (1994) (information is public if it was "created" in connection with transaction of official business). If the information contained in the electronic mail here had been created instead in the form of printed or typewritten memoranda, it would clearly be public information which, subject to the act's exceptions, must be disclosed on request. But the fact that electronic mail is instead recorded and transmitted electronically, using computers, does not in itself create a distinction for purposes of the Open Records Act. *See* Open Records Decision No. 352 (1982) (noting "that the form in which information is stored should have nothing to do with its availability under the Open Records Act"). The electronic mail message at issue here is "public information" within the definition of section 552.021.<sup>1</sup>

Although you do not raise exceptions to required public disclosure, we note that section 552.101 in conjunction with section 261.201 of the Family Code<sup>2</sup> prohibits disclosure of the requested information to the general public. This Family Code provision reads in pertinent part as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be

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<sup>1</sup>We note that the open records laws were substantially amended by the Seventy-fourth Legislature. Act of May 29, 1995, 74th Leg., R.S., ch. 1035, 1995 Tex. Sess. Law Serv. 5127 (Vernon) (to be codified as amendments to Gov't Code ch. 552). The amendments to chapter 552 "apply only to a request for information that is received by a governmental body on or after September 1, 1995." *Id.* § 26(a), 1995 Tex. Sess. Law Serv. at 5142 (Vernon). Section 2 of the bill transfers the definition of "public information" from section 552.021 to section 552.002, and adds to the latter section the provision that "[t]he media on which public information is recorded include: a magnetic, optical, or solid state device that can store an electronic signal." These amendments, while perhaps more expressly including the type of electronic mail information at issue here under the definition of "public information," do not in our opinion indicate that electronic mail had not been public information under the predecessor language of the act. Again, it has been the long-standing position of this office under the pre-amendment language of the act that information held in an electronic medium is public information if the other criteria of the definition of that term are met.

<sup>2</sup>*See* Act of April 6, 1995, 74th Leg., R.S., ch. 20, § 1, 1995 Tex. Sess. Law Serv. 113, 262 (Vernon); Act of May 26, 1995, 74th Leg., R.S., ch. 751, § 93, 1995 Tex. Sess. Law Serv. 3888, 3924 (Vernon).

disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

...

(f) Notwithstanding Subsection (b),<sup>3</sup> the department, on request and subject to department rule, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if the department has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure.

*See* Act of May 26, 1995, 74th Leg., R.S., ch. 751, § 93, 1995 Tex. Sess. Law Serv. 3888, 3924 (Vernon) (footnote added). The requested information consists of a communication used or developed in investigations made under chapter 261 of the Family Code. However, subsection (f) requires the department to provide certain parties, including a parent of a child who is the subject of a child abuse investigation, the information made confidential by subsection (a), with certain redactions. As the requestor here appears to be the parent of one of the children involved in the investigation, we must consider whether the department must release information regarding her child pursuant to subsection (f). As the department's release of the information pursuant to subsection (f) is "subject to department rule," we must consider whether the department's rules provide for the disclosure of the requested information to the requestor in this instance.

Section 700.103 of title 40 of the Texas Administrative Code provides as follows:

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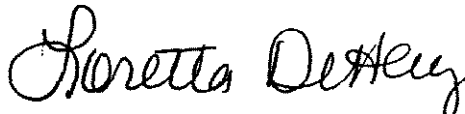
<sup>3</sup>Subsection (b), which is not applicable here, describes the conditions when a court may order the disclosure of information made confidential by subsection (a)

A child protective services client may review all information in the client's case record except the identity of the complainant, *information exempted from disclosure under the Open Records Act*, and information exempted under other state laws.

40 T.A.C. § 700.103 (emphasis added). This rule permits a "client" to review that client's case record, with the exception of the complainant's identity. *See also* 31 T.A.C. § 734.11(c) (permitting client review of case record information, with certain exceptions). We believe that, in this instance, the parent is a "client" for purposes of section 700.103. Although this rule makes an exception to a client's right to review information in the client's case record for information "exempted from disclosure under the Open Records Act," we further conclude that this exception is not applicable as the department has not raised any exceptions to disclosure under the Open Records Act. Therefore, pursuant to section 261.201(f), the department must release the requested information concerning the requestor's child. All remaining information must be withheld.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay  
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Open Records Division

LRD/ch

Ref.: ID# 37588

Enclosures: Submitted documents

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